

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by sections 11 (3) (v) of the Capital Markets Act, the Capital Markets Authority issues the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015, for application by both listed and unlisted public companies in Kenya.

THE CODE OF CORPORATE GOVERNANCE PRACTICES FOR ISSUERS OF
SECURITIES TO THE PUBLIC 2015

PART I: PRELIMINARY

CHAPTER 1

1.1 INTRODUCTION

1.1.1 Citation

This Code may be cited as the Code of Corporate Governance Practices for Issuers of Securities to the Public 2015.

This Code succeeds the Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya, 2002. The Code sets out the principles and specific recommendations on structures and processes, which companies should adopt in making good corporate governance an integral part of their business dealings and culture.

The Code advocates for the adoption of standards that go beyond the minimum prescribed by legislation. The Code has moved away from the “Comply or Explain” approach to “Apply or Explain”. This approach is principle-based rather than rule-based, and recognizes that a satisfactory explanation for any non-compliance will be acceptable in certain circumstances. The approach therefore requires boards to fully disclose any non-compliance with the Code to relevant stakeholders including the Capital Markets Authority with a firm commitment to move towards full compliance. However, the Code contains mandatory provisions which are the minimum standards that issuers must implement, and these are replicated in the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002. Where Mandatory provisions are imposed by this Code, it is stated that companies shall comply with the particular requirement.

Issuers of restricted offers of securities to sophisticated, institutional or professional investors are exempted from strict compliance with the mandatory provisions and may adopt them as a matter of best practice.

1.1.2 Interpretation

In this Code, unless the context otherwise requires—

“board charter” means a document outlining the role and responsibilities of the Board of directors, powers of the Board, various Board committees and their roles, separation of roles between the Board and Management and the policies and practices of the Board in respect of corporate governance matters;

“board member” means a board member who is a director of the company;

“board work plan” means a document setting out activities of the board over a period of time;

“capital markets” means financial markets for the buying and selling of long-term debt or equity-backed securities. These markets channel the wealth of savers to those who can put it to long-term productive use, such as companies or governments making long-term investments;

“conflict of interest” means a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person’s self- interest and professional interest or public interest;

“corporate governance” means the process and structure used to direct and manage the business and affairs of a company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder value, whilst taking account of the interests of other stakeholders;

“directors emoluments” includes salary, fees and bonuses, any sums paid by way of expense allowances in so far as these are chargeable to income tax, any contribution paid in respect of the director under any pension scheme, and the estimated money value of any other benefits received by the director otherwise than in cash;

“executive director” means a member of the board who also serves as a manager of the company;

“equitable terms of shareholders” includes the treatment of shareholders equally according to the rights conferred on them including—

- (a) the right to attend general meetings;
- (b) the right to vote in general meetings;
- (c) the right to receive a copy of the annual report and financial statements of the company;
- (d) the right to receive a dividend; and
- (e) the right to the product of liquidation;

“fiduciary” means the legal or ethical relationship between two or more parties;

“fiduciary duties” includes the duties of care, skill and diligence;

“governance audit” means an assessment to determine the degree of adherence to good corporate governance practices;

“independent director” means a member of a board of directors who does not have a material or pecuniary relationship with the company or related persons, is compensated through sitting fees or allowances, does not own shares in the company and after nine years of service, a continuing independent director ceases to be one and assumes the position of a non-executive director;

“integrated reporting” means a process that —

- (a) brings together the material information about an organization's strategy, governance, performance and prospects in such a way that reflects its commercial, social and environmental context within which it operates;
- (b) provides a clear and concise representation of how an organization demonstrates stewardship and how it creates value, now and in the future; and
- (c) combines the most material elements of information currently reported in separate reporting strands (financial, management guidelines, governance and remuneration, and sustainability) into a coherent whole;

“internal control” means the process effected by a company's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations;

“material information” means any information that may affect the price of an issuer's securities or influence investment decisions and includes information on—

- (a) a merger, acquisition or joint venture;
- (b) a stock split or stock dividend ;
- (c) earnings and dividends of an unusual nature;
- (d) the acquisition or loss of a significant contract;
- (e) a significant new product or discovery;
- (f) a change in control or significant change in management;
- (g) a call of securities for redemption;
- (h) the public or private sale of a significant amount of additional securities;
- (i) the purchase or sale of a significant asset;
- (j) a significant labour dispute;
- (k) a significant lawsuit against the issuer;
- (l) establishment of a programme to make purchases of the issuer's own shares;
- (m) a tender offer for another issuer's securities;
- (n) significant alteration of the memorandum and articles of association of the issuer; or
- (o) any other peculiar circumstances that may be controversial and that may prevail with respect to the issuer or the relevant industry;

“non-executive director” means a member of the board of a company who does not form part of the management team and who is not an employee of the company or affiliated with it in any other way but can own shares in the company;

“regulator” means a governmental agency or department that ensures compliance with laws, regulations and established rules;

“related party transaction” means a business deal or arrangement between two or more parties who are joined by a special relationship prior to the deal and includes, a business transaction between a major shareholder, or any company in which he holds shareholding, and the company;

“risk” means the quantifiable likelihood of loss or less-than-expected returns;

“risk management” means a logical and systematic process of identifying, assessing, managing and reporting all risks associated with a company’s business activities that enables it to minimize losses and maximize opportunities as it pursues its strategic goals;

“majority shareholder” includes a person or group of persons—

(a) entitled to exercise powers of the company and control its affairs;

(b) controlling three quarters of the votes and who would have a complete control in terms of special resolutions; or

(c) who holds more than fifty percent or seventy five percent of the voting rights of a company;

“minority shareholder” means a person or group of persons who cannot exercise the powers of a company or control its affairs;

“substantial or significant shareholder” means a person who is the beneficial owner of, or is in a position to exert control over, not less than fifteen percent of the shares of a company;

“shareholder rights” means the rights which a shareholder acquires when he or she purchases the shares of a company and these rights include information rights, voting rights and financial rights;

“stakeholder” means a party that has an interest in an enterprise or project and primary stakeholders in a typical company including its investors, employees, customers and suppliers whereas other stakeholders include the community, government and trade associations;

“sustainability” means conducting operations in a manner that meets existing needs without compromising future needs; and

“triple bottom line” means the accounting system which expands the traditional reporting framework to take into account social and environmental performance in addition to financial or economic performance.

1.1.3 Implementation and oversight

Issuers are encouraged to implement this Code immediately but not later than one year after its publication in the *Gazette*.

Where an issuer does not implement this Code one year after it has been published, the issuer shall disclose to the Capital Markets Authority the reasons for non-application, and clearly indicate the time frame required and the strategies to be put in place towards full application.

At the end of every year, the board shall disclose in its annual report a statement of policy on good governance and the status of application of this Code.

The Authority shall work with other complementary institutions in ensuring compliance with this Code. The complementary institutions are—

(a) the Licensed Securities Exchanges;

(b) the Registrar of Companies; and

(c) the Courts.

This Code is prepared in a format, which contains three sections. These are the broad principles, the recommended practices and the guidelines. The details of what is contained under each section are as follows—

Principles

The principles of governance encapsulate broad concepts underpinning good corporate governance that companies should apply when implementing the recommendations.

Recommendations

The recommendations are standards that flow from the principles, and which companies are expected to adopt as part of their governance structure and processes. Issuers of securities to the public shall explain in their annual reports how they have applied the recommendations.

Guidelines

Each recommendation is followed by a guideline, which seeks to assist companies in understanding the recommendation. It also provides some guidance to companies in implementing the recommendations.

1.1.4 Purpose

This Code is intended to provide the minimum standards required from shareholders, directors, chief executive officers and management of a listed company or an unlisted company that issues securities to the public, so as to promote high standards of conduct as well as ensure that they exercise their duties and responsibilities with clarity, assurance and effectiveness.

The Code should not restrict or replace the proper judgement of the management and employees.

1.1.5 Scope

The Code sets out the principles and specific recommendations on structures and processes, which companies shall adopt in making Corporate Governance an integral part of their business dealings and culture.

1.1.6 Responsibility

The Board of directors of each company shall be responsible for formulating policies, procedures and guidelines, which ensure that—

- (a) all directors, chief executive officers and management are made fully aware of the requirements of this Code;
- (b) all management decisions are made in accordance with prudent corporate governance practices; and the shareholders of each institution are responsible for the appointment of a competent and dedicated Board of directors.

PART II

CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

CHAPTER 2

BOARD OPERATIONS AND CONTROL

Overview

The single most important institution in corporate governance is the Board of directors. Effective corporate governance requires a Board composed of qualified and competent members capable of exercising objective and independent judgment, and focused on guiding strategy development and monitoring management. A proper understanding of the role and responsibilities of the Board must be shared not only by members of the Board, but also by company executives and external stakeholders, to ensure that the Board has appropriate autonomy, authority, and accountability in exercising its functions and that it can be held accountable by stakeholders.

2.1 Appointment, composition, size and qualifications of Board members

Principle

There shall be a formal and transparent procedure in the appointment of Board members and all persons offering themselves for appointment as directors should disclose any potential area of conflict that may undermine their position or service as director.

2.1.1 Recommendation

Procedure for Board appointments

The Board shall have transparent and documented procedures for appointment of new Board members.

Guideline

- (a) Shareholders are ultimately responsible for appointments to the Board and it is in their best interest to ensure that the Board is properly constituted. Information relating to those nominated for Board positions should be available to shareholders in advance of any decision making. As the information is disseminated, the Company should ensure the use of a wide variety of communication channels so as to cater for shareholders diverse media consumption habits.
- (b) To the extent that the duty is vested in general meetings, the shareholders should ensure that only credible persons who can add value to the company's business are elected to the Board of directors.
- (c) Board appointment procedures shall be transparent and clearly documented and approved by the Board before they can be used. The procedures should be formal and a matter for the Board as a whole, assisted by the nomination committee, and subject to shareholder approval when necessary.
- (d) The appointment process should be well managed to ensure that a balanced mix of proficient individuals is attained and that each of those appointed is able to add value and bring independent judgment to bear in the decision-making process.
- (e) All persons offering themselves for appointment as Board members shall disclose any potential areas of conflict that may undermine their position or service as director.
- (f) Board members should receive formal letters of appointment setting out the main terms and conditions relative to their appointment.

2.1.2 Recommendation

Role of the Nomination Committee in Board appointments

The Board shall appoint a nomination committee consisting mainly of independent and non-executive Board members with the responsibility of proposing new nominees for appointment to the Board and for assessing the performance and effectiveness of the directors of the Company.

Guideline

- (a) The Board through the nomination committee shall on an annual basis review the required skills mix and expertise that the executive directors as well as independent and non-executive directors bring to the Board and make disclosure of the same in its annual report.
- (b) The nomination committee shall recommend to the Board candidates for directorships to be considered for appointment by the shareholders.
- (c) The nomination committee shall consider only persons of calibre, credibility and who have the necessary skills and expertise to exercise independent judgement on issues that are necessary to promote the company's objectives and performance in its area of business.
- (d) The nomination committee shall consider candidates for directorships proposed by all the shareholders including the majority shareholders.

2.1.3 Recommendation

Board composition

The Board shall comprise a balance of executive and non-executive directors, with a majority of non-executive directors. Independent non-executive directors shall be at least one third of the total number of Board members.

Guideline

- (a) The structure of the Board shall comprise a number of directors, which fairly reflects the company's shareholding structure. The composition of the Board shall not be biased towards representation by a substantial shareholder but shall reflect the company's broad shareholding structure. The composition of the Board shall provide a mechanism for representation of the minority shareholders without undermining the collective responsibility of the directors.
- (b) In instances where there is no major shareholder but there is a substantial shareholder, the Board shall exercise judgment in determining the representation on the Board of such shareholder and of the other shareholders that effectively reflects the shareholding structure of the Company.
- (c) Executive members of the Board shall manage the conflict that arises between their management role and their role in the Board.

2.1.4 Recommendation

Board size

The Board shall be of a sufficient size.

Guideline

The Board shall be of such a number that enables the requirements of the company's business to be met. The size of the Board shall not be too large to undermine an interactive discussion during Board meetings or too small such that the inclusion of wider expertise and skills to improve the effectiveness of the Board and the formation of its committees is compromised.

2.1.5 Recommendation

Diversity

The Board shall have a policy to ensure the achievement of diversity in its composition.

Guideline

Each Board shall consider whether its size, diversity and demographics make it effective. Diversity applies to academic qualifications, technical expertise, relevant industry knowledge, experience, nationality, age, race and gender. The appointment of Board members shall be gender sensitive and shall not be perceived to represent a single or narrow constituency interest. Where companies establish a diversity policy, the companies shall introduce appropriate measures to ensure that the policy is implemented.

2.1.6 Recommendation

Multiple directorships

There shall be a limit to the number of directorships a member of the Board holds at any given time.

Guideline

A director of a listed company except a corporate director shall not hold such position in more than three public listed companies at any one time. This is to ensure effective participation by such directors in the Board. In a case where the corporate director has appointed an alternate director, the appointment of such alternate director shall be restricted to two public listed companies at any one time. An executive director of a listed company shall be restricted to one other directorship of another listed company. A chairperson of a public listed company shall not hold such position in more than two public listed companies at any one time, in order to allow the chairperson to devote sufficient time to steering the Board.

2.1.7 Recommendation

Alternate Board members

An alternate director shall be nominated by the substantive director but subjected to vetting by the nomination committee.

Guideline

(a) A person may act as an alternate director to a director of a company.

- (b) An alternate director has all the obligations imposed on the substantive director.
- (c) Each substantive director, whether body corporate or natural person shall have only one alternate director.
- (d) A body corporate shall not be nominated as an alternate director.
- (e) Alternate directors shall not be appointed as members of the audit committee.

2.1.8 Recommendation

Succession planning

The term of office of the Board members shall be organised in a manner that ensures that there is a smooth transition.

Guideline

The term of office of the members of the Board shall be organised in such a way that they end at different times. This ensures retention of institutional memory and makes it easier to induct new Board members. Where possible, no more than one third of the Board members shall retire at the same time.

2.2 Structure of the Board

Principle

The Board shall be constituted to ensure effectiveness and value addition to the Company.

2.2.1 Recommendation

Skills and experience

The Board and its committees shall have the appropriate balance of skills, experience, independence and knowledge of the company and its business, to enable them discharge their respective duties and responsibilities effectively.

Guideline

The Board shall be structured in a way that it has different skills and expertise within itself. An effective Board is one that facilitates the effective discharge of the duties imposed by law and adds value in a way that is appropriate to the particular company's circumstances. The Board shall be structured in such a way that —

- (a) it has a proper understanding of, and competence to deal with, the current and emerging issues of the business;
- (b) it exercises independent judgement;
- (c) it encourages enhanced performance of the Company; and
- (d) it can effectively review and challenge the performance of Management.

2.2.2 Recommendation

The Board shall establish relevant committees with written terms of reference, which set out their authority and duties.

Guideline

The Board shall establish committees to cover broad functions of the company such as: audit, Board nominations, risk management, remuneration, finance, investment and governance.

The committees shall be appropriately constituted with members who have the necessary skills and expertise to handle the responsibilities allocated to them. Where some skills are not available, the Board may co-opt independent and external professionals to that committee.

The Board shall review the mandate of the committees periodically to ensure that they remain relevant. The Board shall also ensure that each Board committee has its own Charter.

The Board shall specifically—

- (a) establish audit and nomination committees;
- (b) appoint chairpersons of committees;
- (c) determine the procedure and process within which the committee may be allowed to engage independent professional advice at the company's expense; and
- (d) review the effectiveness and performance of committees annually.

2.2.3 Recommendation

The Nomination Committee

The chairperson of the nomination committee shall be an independent director.

Guideline

In order to exercise independent judgment and be impartial in discharging his or her responsibilities, the chairperson of the nomination committee shall be an independent director. In the absence of a nomination committee, all the duties that would have been performed by this committee must be performed by another designated committee of the Board.

2.2.4 Recommendation

The Audit Committee

The Board shall establish an audit committee of at least three independent and non-executive directors.

Guideline

The chairperson of the audit committee shall be an independent and non-executive director and at least one of the committee members shall hold a professional qualification in audit or accounting and be in good standing with his or her respective professional body. The important attributes of committee members shall include—

- (a) broad business knowledge relevant to the company's business;
- (b) keen awareness of the interests of the investing public and familiarity with basic accounting principles; and
- (c) objectivity in carrying out their mandate without any conflict of interest.

2.3 The functions of the Board

Principle

Every company shall be headed by an effective Board, which shall offer strategic guidance, lead and control the company and which is accountable to its shareholders.

2.3.1 Recommendation

Fiduciary duties

The Board shall establish clear roles and responsibilities in discharging its fiduciary and leadership functions.

Guideline

In exercising fiduciary duties, each Board member—

- (a) must exercise reasonable degree of care, skill and diligence;
- (b) must act in the best interests of the company and not for any other purpose;
- (c) must act honestly at all times and must not place themselves in a situation where personal interests conflict with those of the company;
- (d) must at all times exercise independent judgement;
- (e) must devote sufficient time to carry out their responsibilities and enhance their skills;
- (f) shall promote and protect the image of the company;
- (g) must owe their duty to the company and not to the nominating authority; and
- (h) must owe the company a duty to hold in confidence all information available to them by virtue of their position as a Board member.

2.3.2 Recommendation

Functions of the Board and Management

The Board shall establish clear functions reserved for the Board and those to be delegated to the management.

Guideline

The functions of the Board shall be separate from those of the Management. The Board shall—

- (a) define the company's mission, vision, its strategy, goals, risk policy plans and objectives, including approval of its annual budgets;
- (b) oversee the corporate management and operations, management accounts, major capital expenditures and review corporate performance and strategies at least on a quarterly basis;
- (c) identify the corporate business opportunities as well as principal risks in its operating environment, including the implementation of appropriate measures to manage such risks or anticipated changes impacting on the corporate business;
- (d) develop appropriate staffing and remuneration policy including the appointment of the Chief Executive Officer and the senior staff, particularly the finance director, operations director and the company secretary as may be applicable;

- (e) review on a regular basis the adequacy and integrity of the company's internal control, acquisition and divestitures and management information systems, including compliance with applicable laws, regulations, rules and guidelines;
- (f) establish and implement a system that provides necessary information to the shareholders, including shareholder communication policy for the company;
- (g) monitor the effectiveness of the corporate governance practices under which the company operates and propose revisions as may be required from time to time; and
- (h) take into consideration the interests of the company's shareholders in its decision-making process.

Members of the board should clearly understand the organization's expectations of them in terms of allocation of individual responsibilities. To this end, formal letters of appointment setting out the key terms and conditions relative to their appointment are useful and should be given.

The functions of management, which are mainly in the area of execution include: planning, organizing, staffing, co-ordinating, controlling, reporting and budgeting.

2.3.3 Recommendation

Roles of Chairperson and Chief Executive Officer (CEO)

The functions of the Chairperson and the Chief Executive Officer shall not be exercised by the same individual.

Guideline

- (a) The division of responsibilities between the Chairperson and the Chief Executive Officer shall be clearly established, set out in writing and agreed by the Board and shall be clearly defined in the Board Charter.
- (b) Separation of the positions of the Chairperson and the Chief Executive Officer promotes accountability and facilitates division of responsibilities between them.
- (c) Separation of the roles of the Chairperson and the Chief Executive Officer ensures balance of power and authority and provides for checks and balances such that no one individual has unfettered powers of decision making.
- (d) The responsibilities of the chairperson shall include leading the board in oversight of management.
- (e) The Chief Executive Officer focuses on the day-to-day management of the company. He or she is responsible for implementing the Board's corporate decisions.
- (f) There shall be a clear flow of information between the Management and the Board in order to facilitate both quantitative and qualitative evaluation and appraisal of the company's performance.
- (g) The Chief Executive Officer is obliged to provide such necessary information to the Board in the discharge of the Board's business.

2.3.4 Recommendation

The position of Chairperson

The Chairperson of an issuer shall be a non-executive Board member.

Guideline

The Chairperson shall not be involved in the day-to-day running of the business so as to provide effective oversight to the company.

2.3.5 Recommendation

Access to information

The Board shall establish procedures to allow its members access to relevant, accurate and complete information and professional advice in order to discharge its duties effectively.

Guideline

In the course of seeking accurate information in order to discharge its duties and responsibilities properly, the Board shall seek legal, financial, governance or any other expert advice necessary. The Board shall be entitled to seek external advice at the company's expense through an agreed procedure.

2.3.6 Recommendation

Promoting sustainability

The Board shall ensure that the company's strategies promote the sustainability of the company.

Guideline

The Board shall have formal strategies to promote sustainability. Attention shall be given to Environmental, Social and Governance (ESG) aspects of the business which underpin sustainability.

2.3.7 Recommendation

Related party transactions

The Board shall put in place a policy on related party transactions.

Guideline

All related party transactions shall meet the requirements of the law and be approved by the Board before being executed.

2.3.8 Recommendation

Conflict of interest

The Board shall put in place a policy to manage conflict of interest.

Guideline

- (a) Upon appointment to the Board and thereafter, where circumstances so demand, directors shall declare any real or perceived conflict of interest with the company.
- (b) Directors shall not take part in any discussions or decision-making regarding any subject or transactions in which they have a conflict of interest.

(c) The company shall maintain a register of declared conflict of interest.

2.3.9 Recommendation

The Company Secretary

The Board shall be assisted by a suitably qualified and competent company secretary who is a member of the Institute of Certified Public Secretaries of Kenya (ICPSK) in good standing.

Guideline

The Board shall regularly consult the company secretary on procedural and regulatory matters. The company secretary plays an important role in supporting the Board by ensuring adherence to Board policies and procedures.

A more detailed Guideline on the company secretary is as follows—

- (a) The Board shall have power to appoint or remove the company secretary.
- (b) The Board shall empower the company secretary to enable him or her effectively carry out his or her role.
- (c) The company secretary shall not be a member of the Board.
- (d) The company secretary shall provide guidance to the Board on its duties and responsibilities and on other matters of governance.
- (e) The company secretary shall ensure the timely preparation and circulation of the Board and Committee minutes and other relevant papers.
- (f) The company secretary shall assist the Board with evaluation exercise.
- (g) The company secretary shall coordinate the governance audit process.
- (h) The company secretary shall have custody of the organization's seal and shall account to the Board for its use and maintain a record of its use.
- (i) The company secretary shall maintain and update the register of conflict of interest.
- (j) The company secretary shall facilitate effective communication between the organization and the shareholders.

2.4 Board independence

Principle

The Board shall have policies and procedures in place to ensure independence of its members.

2.4.1 Recommendation

Independent Board members

The status of independent Board members shall be assessed annually by the entire Board.

Guideline

The Board shall determine who the independent members are on an annual basis. Independent Board members bring independent and objective judgement to the Board and this

mitigates risks arising from conflict of interest or undue influence from interested parties. An independent Board member is one who:

- (a) has not been employed by the company in an executive capacity within the last three years;
- (b) is not associated with an adviser or consultant to the company or a member of the company's senior management or a significant customer or supplier of the company or with a not-for-profit entity that receives significant contributions from the company; or within the last three years, has not had any business relationship with the company (other than service as a director) for which the company has been required to make disclosure;
- (c) has no personal service contract with the company, or a member of the company's senior management;
- (d) is not employed by a public listed company at which an executive officer of the company serves as a director;
- (e) is not a member of the immediate family of any person described above, or has not had any of the relationships described above with any affiliate of the company;
- (f) is not a representative of a shareholder who has the ability to control or significantly influence management;
- (g) is free from any business or other relationship which could be seen to interfere materially with the individual's capacity to act in an independent manner;
- (h) does not have a direct or indirect interest in the company (including any parent or subsidiary in a consolidated group with the company) which is either material to the director or to the company. A holding of five percent or more is considered material;
- (i) does not hold cross-directorships or significant links with other directors through involvement in other companies or bodies; and
- (j) has not served for more than nine years since they were first elected.

2.4.2 Recommendation

Tenure of independent Board members

The tenure of an independent Board member shall not exceed a cumulative term of nine years. Upon completion of the nine years, an independent Board member may continue to serve on the Board subject to re-designation as a non-independent member.

Guideline

The assessment criteria for independence of directors shall also include tenure. Long tenure can impair independence. As a result, tenure of an independent Board member is capped at nine years. The nine years can either be a consecutive service of nine years or a service of nine years with intervals.

2.5 Age limit for Board members

Principle

There shall be an age limit for the members of the Board.

2.5.1 Recommendation

Age limit

An age limit of seventy years is recommended.

Guideline

It is desirable for Board members to retire at the age of seventy years. However, members, at an Annual General Meeting, may vote to retain a Board member who is over seventy years.

2.6 Board tools

Principle

The Board shall have the necessary tools and aids in place to enable it to be effective in discharging its roles and responsibilities.

2.6.1 Recommendation

Code of Ethics and Conduct

The Board shall formalise its ethical standards through the development of a Code of Ethics and Conduct and shall ensure that it is complied with.

Guideline

A key role of the Board is to establish a corporate culture with ethical conduct that permeates the whole company. The Board needs to develop a Code of Ethics and Conduct and ensure the implementation of appropriate internal systems to support, promote and ensure compliance. The Code of Ethics and Conduct shall include appropriate communication and feedback mechanisms which facilitate whistle-blowing.

The Board shall periodically review its Code of Ethics and Conduct. Besides, a summary of this code shall be made available on the company's website.

2.6.2 Recommendation

Board Charter

The Board shall establish, periodically review and make public its Board Charter.

Guideline

In establishing a Charter, it is important for the Board to set out the key values, principles and mode of operation, as policies and strategy development are based on these considerations. The Charter shall set out the strategic intent and outline the Board's roles and responsibilities. The Charter shall be a source reference and primary induction literature for incoming Board members and, provide insights to prospective Board members and senior management. It should also assist the Board in the assessment of its own performance and that of its individual directors. Although created in the primary charter, Board committees shall have their own Charters. The Charter shall be made public by being published on the company's website.

The Board Charter and the Code of Ethics and Conduct shall be established as two separate documents.

2.6.3 Recommendation

Annual Board Work-plan

The Board shall develop an annual work-plan to guide its activities.

Guideline

The Board work-plan shall as a minimum, focus on—

- (a) strategic plan development and review;
- (b) assessment of management's implementation of strategies, policies and plans;
- (c) risk assessment and management;
- (d) budgeting and financial management;
- (e) quality assurance processes; and
- (f) board evaluation.

2.6.4 Recommendation

Board evaluation toolkit

The Board shall determine and agree on its annual evaluation toolkit.

Guideline

Board members shall agree on the parameters to be used in the annual evaluation process. The parameters, to be contained in an evaluation tool shall be reviewed when necessary so as to keep up with new developments in corporate governance.

The Board shall work with independent governance specialists to develop the parameters to be included in the evaluation toolkit.

2.7 Board induction and continuous skills development

Principle

All Board members shall receive induction on joining the board and shall update their skills and knowledge at regular intervals.

2.7.1 Recommendation

Induction of Board members

The Board shall establish a formal induction program and ensure that every in-coming member is inducted.

Guideline

The Chairperson shall ensure that new Board members receive a full, formal and tailored induction on joining the Board.

Newly appointed Board members shall be provided with necessary orientation in the area of the company's business. This enables them become familiar with the company's operations,

senior management and the business environment and enhance their effectiveness in the Board. New Board members shall also be introduced to their fiduciary duties and responsibilities.

2.7.2 Recommendation

Board members development

The Board shall ensure competence up-skilling programs are organised for its members.

Guideline

The chairperson shall regularly review and agree with each Board member on his or her development needs. Thereafter arrangements shall be made to ensure Board members go through the necessary training.

2.7.3 Recommendation

Continuous Board development

In view of the changing business environment, continuous Board members' development shall be undertaken in order to enhance governance practices within the Board itself and in the interest of the company.

Guideline

Board members shall be required to secure at least twelve hours of Board development per year on areas of governance from credible sources.

2.8 Annual evaluation of Board members, including the CEO and Company Secretary

Principle

The Board shall undertake an annual evaluation of its own performance, the performance of the Chairperson, that of its committees, individual members, the Chief Executive Officer and company secretary.

Guideline

Following an evaluation exercise, the Board shall discuss the evaluation results and implement any recommendations. Development needs of the Board members may be determined from the results of the evaluation exercise.

2.9 Remuneration of Board members

Principle

Companies shall remunerate Board members fairly and responsibly.

2.9.1 Recommendation

Remuneration policies and procedures

The Board shall establish and approve formal and transparent remuneration policies and procedures that attract and retain Board members.

Guideline

- (a) The remuneration policy for Board members shall clearly stipulate the elements of such remuneration including directors' fees, attendance allowances and bonuses.
- (b) The Board shall ensure that the remuneration policies are aligned with its strategies.

(c) The Board remuneration policies and procedures shall be disclosed in the annual report.

2.9.2 Recommendation

Level of remuneration

The Board shall determine the remuneration of the directors.

Guideline

- (a) The Board of directors shall set up an independent remuneration committee or assign a mandate to a nomination committee or such other committee executing the functions of a nomination committee, consisting mainly of independent and non-executive directors, to recommend to the Board the remuneration of the executive and non-executive directors and the structure of their compensation package.
- (b) The directors' remuneration shall be sufficient to attract and retain directors to run the company effectively and shall retroactively be approved by shareholders in an Annual General Meeting.
- (c) The executive directors' remuneration shall be structured in line with remuneration for other directors in the same industry and shall be aligned with the business strategy and long-term objectives of the company.
- (d) The remuneration of the executive directors shall include an element that is linked to corporate performance, including a share option scheme, so as to ensure the maximization of the shareholders' value.
- (e) The remuneration of non-executive directors shall be competitive and in line with remuneration for other non-executive directors in the same industry.
- (f) The remuneration package to directors shall be appropriately disclosed.

2.10 Compliance with Laws, Regulations and Standards

Principle

The Board shall ensure the company complies with the Constitution, all applicable laws and regulations, national and international standards, as well as its internal policies.

2.10.1 Recommendation

The Board shall identify all applicable laws, regulations and standards that the company shall comply with.

Guideline

The company shall comply with applicable laws which include but are not limited to National and County Legislation, supporting rules and regulations, this Code, relevant circulars and guidelines issued by the Capital Markets Authority and other government entities, applicable regional regulations and international treaties and standards.

2.10.2 Recommendation

The Board shall develop and implement a strategy on compliance with all applicable laws, regulations and standards.

Guideline

The Board shall establish internal procedures and monitoring systems to promote compliance with applicable laws, regulations and standards. In addition, the Board shall ensure that the compliance strategy is aligned to the operations of the company.

2.10.3 Recommendation

The Board shall organise for a legal and compliance audit to be carried out on a periodic basis.

Guideline

The Board shall ensure the following—

- (a) Save for when the independent legal and compliance audit is carried out, an internal legal and compliance audit shall be carried out on an annual basis, with the objective of establishing the level of adherence to applicable laws, regulations and standards;
- (b) That a comprehensive independent legal audit is carried out at least once every two years by a legal professional in good standing with the Law Society of Kenya;
- (c) That the findings from the audits are acted upon and any non-compliance issues arising corrected as necessary.

2.11 Governance audit

Principle

The Board shall ensure that a governance audit is carried out at least annually to confirm the company is operating on sound governance practices.

2.11.1 Recommendation

The Board shall subject the company to an annual governance audit by a competent and recognized professional accredited for that purpose by the Institute of Certified Public Secretaries of Kenya (ICPSK), in order to check on the level of compliance with sound governance practices.

Guideline

The governance audit shall among other areas cover the company's governance practices in the following parameters—

- (a) leadership and strategic management;
- (b) transparency and disclosure;
- (c) compliance with laws and regulations;
- (d) communication with stakeholders;
- (e) Board independence and governance;
- (f) Board systems and procedures;
- (g) consistent shareholder and stakeholders' value enhancement; and
- (h) corporate social responsibility and investment.

After undergoing the governance audit, the Board shall provide an explicit statement on the level of compliance.

CHAPTER 3

RIGHTS OF SHAREHOLDERS

3.0 Overview

Shareholder rights and investor protection are key factors to consider when determining the ability of companies to raise the capital they need to grow, innovate, diversify and compete effectively. If the legal and governance framework does not provide such protection, investors may be reluctant to invest unless they become the controlling shareholders. It is critical that the governance framework ensures the equitable treatment of all shareholders, including the minority.

3.1 The rights of shareholders

Principle

The Board shall recognize, respect and protect the rights of shareholders.

3.1.1 Recommendation

The Board shall facilitate the effective exercise of the rights of shareholders.

Guideline

- (a) All shareholders shall receive relevant information on the company's performance through the distribution of annual reports and accounts, and half-yearly results as a matter of best practice. Such reports shall be available across multiple communication channels suitable to shareholders' different media consumption habits. These include websites, postal mail and newspapers.
- (b) All shareholders have a right to receive relevant sufficient and timely information concerning the date, location and agenda of the Annual General Meeting as well as full and timely information regarding issues to be decided during the Annual General Meeting. Such information shall be received at least 21 calendar days before the Annual General Meeting.
- (c) The Board shall make shareholders expenses and convenience a primary criterion when selecting the venue and location of Annual General Meeting.
- (d) The shareholders have a right to a secure method of transfer and registration of ownership of their shares.
- (e) Every shareholder has the right to participate and vote at the general shareholders meeting including the election of directors.
- (f) The shareholders are encouraged to participate in the Annual General Meetings and to exercise their votes.
- (g) The Board shall ensure that shareholders' right to full participation at Annual General Meetings are protected by giving shareholders—
 - (i) sufficient information on each subject to be discussed at the Annual General Meeting.
 - (ii) sufficient information on voting rules or procedures;
 - (iii) proxy models with different voting options:

- (iv) the opportunity to question the management;
 - (v) the opportunity to place items on the agenda at Annual General Meetings;
 - (vi) the opportunity to vote in absentia; and
 - (vii) sufficient information to enable them to consider the costs and benefits of their votes.
- (h) Every shareholder shall be entitled to ask questions, seek clarification on the company's performance as reflected in the annual reports and accounts or on any matter that may be relevant to the company's performance or promotion of shareholders' interests and to receive explanation from the directors and/or management. This right shall be exercised in such a way as not to disrupt the business of an Annual General Meeting.
- (i) Every shareholder is entitled to distributed profit, in form of dividends, and other rights for bonus shares, script dividend or rights issue, as applicable and in the proportion of its shareholding in the company.
- (j) The Board shall maintain an effective communication policy that enables both management and the Board to communicate effectively with its shareholders, stakeholders and the public in general.
- (k) The annual report and accounts to the shareholders must include highlights of the operations of the company, financial performance and status of application of this Code.
- (l) Companies shall employ modern communication techniques including the use of teleconferencing, videoconferencing, websites, and emails to communicate with shareholders.
- (m) Companies, as a matter of best practice, are encouraged to organize regular investor briefings and in particular when the half-yearly and annual results are declared or as may be necessary to explain their performance and promote interaction with investors.
- (n) The Board shall encourage the establishment and use of the company's website by shareholders to speed up communication and interaction among shareholders and the company.

3.2 Equitable treatment of shareholders

Principle

The Board shall ensure that all shareholders are treated equitably.

3.2.1 Recommendation

The Board shall ensure there is equitable treatment of all holders of the same class of issued shares.

Guideline

- (a) The Board should ensure that all shareholders, including minority and foreign shareholders are treated in an equitable manner.
- (b) Minority shareholders shall be protected from any adverse actions by the controlling shareholders, acting either directly or indirectly, and shall have effective means of redress.

3.3 Institutional investors

Principle

Institutional investors under the jurisdiction of the Capital Markets Authority (CMA) shall have transparent, honest and fair practices in their dealings with the companies in which they invest.

3.3.1 Recommendation

Institutional investors shall take up the role of stewardship as the representatives of their clients or investors in listed companies and other approved products through their organizations.

Guideline

Institutional investors are particularly encouraged to make direct contact with the company's management and Board to discuss performance and corporate governance matters as well as vote during the Annual General Meetings of the Company.

3.3.2 Recommendation

Institutional investors shall commit themselves to complying with principles of a Code that governs the roles and responsibilities of institutional investors operating under the jurisdiction of the Capital Markets Authority.

Guideline

The principles of the Code governing institutional investors should include—

- (a) public disclosure on discharge of stewardship responsibilities;
- (b) a policy on conflict of interest in relation to stewardship which should be publicly disclosed;
- (c) monitoring and evaluation of their client's investments;
- (d) guidelines on when and how they will escalate their stewardship activities;
- (e) a policy on voting at Annual General Meetings and disclosure of voting activity; and
- (f) A policy on periodic reporting to their clients.

3.4 The media and corporate governance

Principle

The Board shall proactively engage the media on dissemination of important company information and issues relating to good corporate governance in order to inform and protect investors and other stakeholders.

3.4.1 Recommendation

Information to the media should be released proactively on a timely basis to ensure effective reporting on corporate affairs as well as issues of corporate governance.

Guideline

Reporters who cover company or industry events communicate constantly with industry observers, participants, critics and supporters. They sometimes develop insights that are even deeper than a company's management may have. They can serve as an early warning system

of trouble ahead although companies often see them as having a biased view. Such early warning systems shall assist companies to take corrective measures in areas they were not doing well.

CHAPTER 4 STAKEHOLDER RELATIONS

4.0 Overview

Effective management of stakeholders will positively impact the company's achievement of its strategy and long-term growth. Stakeholders are considered to be any group who can affect, or be affected by the Company, its decision and its reputation. They include shareholders, customers, suppliers, employees, creditors, regulators, lenders, media, auditors and potential investors. The Corporate Governance framework should recognise the rights of stakeholders and encourage active co-operation between companies and stakeholders in creating wealth, and sustainability of financially sound enterprises.

4.1 Managing stakeholder relations

Principle

The Board shall proactively manage the relationship with stakeholders.

4.1.1 Recommendation

The Board shall have a stakeholder-inclusive approach in its practice of corporate governance and shall identify its various stakeholders.

Guideline

The Board shall identify all its stakeholders, and map out areas of interaction with such stakeholders.

A stakeholder-inclusive approach to corporate governance recognises that a Company has many stakeholders that can affect or be affected by it, in the achievement of its strategy and long-term sustained growth.

4.1.2 Recommendation

The Board shall develop strategies and suitable policies to manage relations with different stakeholder groups.

Guideline

Having identified its key stakeholders, the Company shall develop a strategy and suitable policies on how it shall manage its relations with each of its stakeholder groups.

4.1.3 Recommendation

Constructive engagement with stakeholders shall be deliberate and planned.

Guideline

The Board shall identify mechanisms and processes that can support constructive engagement with stakeholders so as to promote enhanced levels of corporate governance.

4.1.4 Recommendation

The Board shall take into account the interests of all key stakeholder groups before making its decisions.

Guideline

The Board should strive, while acting in the best interests of the Company, to achieve an appropriate balance between the interests of its various stakeholders, in order to achieve the long-term objectives of the Company. The Board, while accountable to the company, should take into account the legitimate expectations of its stakeholders in its decision-making.

Board decisions on balancing the interests of stakeholders should be guided by the aim of ultimately advancing the best interest of the Company.

4.1.5 Recommendation

The Board should recognise, test, where necessary, and respect the governance practices of stakeholders in an effort to improve the company's own governance practices.

Guideline

If a company and its stakeholders in general adhere to the same standards of corporate governance, mutual respect will be a natural consequence. It is therefore important for the company to monitor the quality of corporate governance practised by its strategic stakeholders.

An inclusive corporate governance approach enables the company and its stakeholders to adopt a collaborative approach that promotes reciprocal trust and respect between the company and its key stakeholders.

4.2 Communication with stakeholders

Principle

The Board shall ensure effective communication with stakeholders.

4.2.1 Recommendation

Transparent and effective communication is important for building and maintaining trust that results in good relationships with stakeholders.

Guideline

The Board shall proactively supply relevant information to stakeholders, and have regard for the best interests of the company in determining what information is to be shared. In addition, the Board shall establish whistle-blowing mechanisms that encourage stakeholders to bring out information helpful in enforcing good corporate governance practices.

4.3 Resolving internal and external disputes

Principle

The Board shall establish a formal process to resolve both internal and external disputes.

4.3.1 Recommendation

The Board shall ensure the established channels of dispute resolution are used in the first instance.

Guideline

Disputes involving companies are an inevitable part of doing business. Companies shall establish mechanisms for resolving the disputes in a cost effective and timely manner. Mechanisms to avoid their recurrence shall also be established and implemented. It is incumbent upon directors and executives, in carrying out their duty of care to a company to ensure that disputes are resolved effectively, expeditiously and efficiently. Further, dispute resolution shall be cost effective and not a drain on the finances and resources of the company.

CHAPTER 5

ETHICS AND SOCIAL RESPONSIBILITY

5.0 Overview

To make ethical and responsible decisions, companies shall not only comply with their legal obligations, but shall consider the reasonable expectations of their stakeholders. It is important for companies to demonstrate their commitment to appropriate corporate practices and strive to be socially responsible. Good corporate citizenship is the establishment of ethical relationship between the company and the society in which it operates.

As good corporate citizens of the societies in which they do business, companies have, apart from rights, legal and moral obligations in respect of their social and natural environments. The company as a good corporate citizen should protect, enhance and invest in the well-being of society and the natural ecology.

5.1 Ethical leadership and corporate citizenship

Principle

The Board shall set standards of ethical behaviour required of its members, senior executives and all employees and ensure observance of those standards. In setting the standards, the Board shall have regard to the national standards on ethical conduct by public entities.

5.1.1 Recommendation

The Board shall ensure that all deliberations, decisions and actions are founded on the core values underpinning good governance.

Guideline

The core values underpinning good governance are—

- (a) **Responsibility:** the Board shall assume responsibility for the assets and actions of the company and be willing to take corrective actions to keep the company on its strategic path.
- (b) **Accountability:** the Board must be able to justify its decisions and actions to shareholders and other stakeholders who require it to do so.
- (c) **Fairness:** in its decisions and actions, the Board shall ensure it gives fair consideration to the interests of all stakeholders of the company.
- (d) **Transparency:** the Board shall disclose information in a manner that enables stakeholders to make an informed analysis of the company's performance.

5.2 Management of company's ethical issues

Principle

The Board shall ensure that the company's ethical issues are managed effectively.

5.2.1 Recommendation

The Board shall ensure that ethical risks and opportunities are incorporated in the risk management process.

Guideline

An ethics risk profile shall be compiled, reflecting the company's negative ethics risks (threats) as well as its positive ethics risks (opportunities). This will enable the company to exploit the risk opportunities while avoiding the risks threats.

5.2.2 Recommendation

The Board shall ensure that a Code of Ethics and Conduct is developed and implemented.

Guideline

The Board shall approve the company's Code of Ethics and Conduct , stipulating the ethical values, standards as well as specific guidelines that the company shall adhere to, in its interaction with its internal and external stakeholders.

The Code of Ethics and Conduct shall be reviewed and updated on a regular basis.

5.2.3 Recommendation

The Board shall ensure that compliance with the Code of Ethics and Conduct is integrated in the operations of the company.

Guideline

The Board shall ensure that the company's ethical standards as set out in the Code of Ethics and Conduct and related policies are integrated into the company's strategies and operations.

5.2.4 Recommendation

The Board shall ensure that the company's performance on ethics is assessed, monitored and disclosed.

Guideline

The Board shall assess the company's performance on ethics, and disclose findings to internal and external stakeholders. The Board should also reinforce good ethical conduct and sanction any misconduct.

5.2.5 Recommendation

The Board shall establish and put into effect a whistle blowing policy for the company.

Guideline

The aim of the policy shall be—

(a) to ensure all employees feel supported in speaking up in confidence and reporting matters they suspect may involve anything improper, unethical or inappropriate;

- (b) to encourage all improper, unethical or inappropriate behaviour to be identified and challenged at all levels in the company;
- (c) to provide clear procedures for reporting of such matters;
- (d) to manage all disclosures in a timely, consistent and professional manner; and
- (e) to provide assurance that all disclosures shall be taken seriously, treated as confidential and managed without fear of retaliation.

5.3 The Board and corporate citizenship

Principle

The Board should ensure that the company is and is perceived to be a responsible corporate citizen.

5.3.1 Recommendation

The Board should ensure that management develops corporate citizenship policies for use by the Company.

Guideline

A good corporate citizen is one that has comprehensive policies and practices in place throughout the business that enables it to make decisions and conduct its operations ethically, meet legal requirements and show consideration for society, communities and the environment.

5.3.2 Recommendation

The Board shall consider not only the financial performance but also the impact of the company's operations on society and the environment.

Guideline

The Board is not only responsible for the company's financial bottom line, but for the company's performance in respect of its triple bottom line. This implies that the Board reports to its shareholders and other stakeholders on the company's economic, social and environmental performance.

5.3.3 Recommendation

The Board shall protect, enhance and invest in the well-being of the economy, society and the environment.

Guideline

Although the company is an economic institution, it remains a corporate citizen and therefore has to balance between economic, social and environmental value. The triple bottom line approach enhances the potential of a company to create economic value. By looking beyond immediate financial gain, the company ensures that its reputation, one of its most significant assets, is protected. Besides, there is growing understanding in business that social and environmental issues have financial consequences.

5.4 Strategies and policies relating to good corporate citizenship

Principle

Companies shall develop strategies and policies to guide their activities in becoming and remaining good corporate citizens.

5.4.1 Recommendation

The Board shall ensure that activities leading to good corporate citizenship are well coordinated.

Guideline

Corporate citizenship shall be manifested in tangible programmes and results which can be reported, based on standard performance measures. There is no universal approach to good citizenship programmes. However, the key success factor is that such programmes shall have the commitment of the leadership and shall focus on corporate citizenship rather than on public relations.

The strategies and policies designed to achieve good corporate citizenship shall be planned and co-ordinated across all sections of the company. Negative consequences of fragmentation include duplication and missed opportunities for synergies.

CHAPTER 6

ACCOUNTABILITY, RISK MANAGEMENT AND INTERNAL CONTROL

6.0 Overview

The Board has a responsibility to ensure adequate systems and processes of accountability, risk management and internal control are in place in order to achieve its strategic objectives. The Board shall put in place adequate structures to enable the generation of true and fair financial statements.

The Board should understand that business involves the taking of risk in expectation of rewards. A considered and systematic approach to risk underpins the success of the company. Risk management is the practice of identifying and analysing the risks associated with the business and taking adequate steps to manage these risks. Risk management should not be viewed as a reporting process to satisfy governance expectations only. The rigours of risk management should seek to provide interventions that optimise the balance between risk and reward in the Company.

Internal controls are important for risk management and the Board should be committed to articulating, implementing and reviewing the company's internal control system. 'Internal control' has been defined as;

“the process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.” (*Report by Committee of sponsoring organizations of the American Institute of Certified Public Accountants titled-Internal Control-Integrated Framework*).

6.1 Financial and business reporting

Principle

There shall be a structure to independently verify and safeguard the integrity of the financial reporting process.

6.1.1 Recommendation

The Board shall put in place a structure of review and authorisation designed to ensure the truthful and factual presentation of the company's financial position. This structure shall include—

- (a) review and consideration of the financial statements by the Audit Committee; and
- (b) a process to ensure the independence and competence of the Company's external auditors.

Guideline

The Board shall have processes in place to ensure the books of account are prepared on a timely basis. In addition, the Board shall recognise the value of an effective Audit Committee in ensuring the financial statements of the Company are a reliable source of financial information. The Audit Committee shall amongst other items, ensure that the Company's financial statements comply with applicable financial reporting standards as this is integral to the reliability of financial statements.

6.1.2 Recommendation

The Board shall explain in its annual report its responsibility for preparing the annual report and accounts, and there shall be a statement by the external auditor about their reporting responsibilities.

Guideline

The Board shall take full responsibility for the accuracy of the financial statements.

6.1.3 Recommendation

The shareholders shall appoint independent (external) auditors at each Annual General Meeting in line with company law.

Guideline

- (a) The Board shall establish a formal and transparent arrangement for shareholders to effect the appointment of independent auditors at each Annual General Meeting.
- (b) The Board shall establish a formal and transparent arrangement for maintaining a professional interaction with the company's auditors.
- (c) The auditor of a public listed company shall be a member of the Institute of Certified Public Accountants of Kenya (ICPAK) in good standing and shall comply with the International Auditing Standards.

6.1.4 Recommendation

The Board shall rotate independent auditors every six to nine years.

Guideline

The Board shall recommend to its shareholders in an Annual General Meeting the rotation of auditors in order to improve their independence, objectivity and professional critique.

6.1.5 Recommendation

The Board shall continually work towards the introduction of integrated reporting.

Guideline

Integrated reporting is a process that brings together the material information about an organization's strategy, governance, performance and prospects in such a way that reflects its commercial, social and environmental context within which it operates. It provides a clear and concise representation of how an organization demonstrates stewardship and how it creates value, now and in the future. Integrated reporting combines the most material elements of information currently reported in separate reporting strands (financial, management guidelines, governance and remuneration, and sustainability) into a coherent whole.

Adoption of integrated reporting shall lead to more effective disclosure. From the company's point of view, it means that more issues and areas have been taken into account in running the business including, suppliers, customers, regulators, government, creditors, debtors, investors and even the community where this business is located. Taking care of the interests of varied stakeholders can only lead to better management and control of the company.

The various stakeholders will be able to assess the status of the company from the integrated reports.

6.2 Recognise and manage risks

Principle

The Board shall have an effective risk management framework for the company in place.

6.2.1 Recommendation

The Board shall establish an effective risk management framework for the company.

Guideline

The Board shall determine the company's level of risk tolerance and actively identify, assess and monitor key business risks to safeguard shareholders' investments and the company's assets

6.3 Internal control systems

Principle

The Board shall put in place an effective system of internal control.

6.3.1 Recommendation

The Board shall establish and review on a regular basis the adequacy and integrity of the company's internal control systems and the management of information systems, including compliance with applicable laws, regulations, rules and guidelines.

Guideline

Internal controls are important for risk management and the Board should be committed to articulating, implementing and reviewing the company's internal control systems. Periodic testing of the effectiveness and efficiency of the internal control procedures and processes must be conducted to ensure that the system is viable and robust.

6.3.2 Recommendation

The Board shall set out its responsibility for internal control in the Board Charter.

Guideline

The Board shall clearly delineate its responsibility for internal control in the Board Charter, indicating the steps that need to be taken to achieve a good internal control position for the company.

6.3.3 Recommendation

The Board shall delegate to the management the responsibility of designing, implementing and monitoring effectiveness of internal control systems.

Guideline

The Board shall set out in the Board Charter the role to be played by management in enhancing a good system on internal controls.

6.4 Checking on risk management and internal control practices

Principle

The Board shall confirm the effectiveness of the company's risk management and internal control practices on a regular basis.

6.4.1 Recommendation

The Board shall review the effectiveness of the company's risk management and internal control practices on an annual basis.

Guideline

The Board shall, at least annually, ensure that a review of the effectiveness of the company's risk management practices and internal control systems is conducted and report to shareholders that they have done so. The review shall cover all material controls including financial, strategic, operational and compliance.

6.5 Audit Committee

Principle

The Company shall have an effective Audit Committee.

6.5.1 Recommendation

The Board shall establish an Audit Committee with written terms of reference.

Guideline

Duties of Audit Committees

Audit committees shall have adequate resources and authority to discharge their responsibilities.

The members of the audit committee shall—

- (a) be informed, vigilant and effective overseers of the financial reporting process and the company's internal controls;
- (b) review and make recommendations on management programmes established to monitor compliance with the Code of Ethics and Conduct;
- (c) consider the appointment of the external auditor, the audit fee and the questions of resignation or dismissal of the external auditor;
- (d) discuss with the external auditor before the audit commences the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved;
- (e) review management's evaluation of factors related to the independence of the company's external auditor.;
- (f) in liaison with management, assist the external auditor in preserving independence;
- (g) review the quarterly, half-yearly and year-end financial statements of the company, focusing particularly on—
 - (i) any changes in accounting policies and practices;
 - (ii) significant adjustments arising from the audit;
 - (iii) the going concern assumption; and
 - (iv) compliance with International Accounting Standards and other legal requirements.
- (h) discuss problems and reservations arising from the interim and final audits and any other matter the external auditor may wish to discuss, in the absence of management where necessary;
- (i) review any communication between external auditor(s) and management;
- (j) consider any related party transactions that may arise within the company or group;
- (k) consider the major findings of internal investigations and Management responses;
- (l) have explicit authority to investigate any matter within its terms of reference, and shall be availed the resources it needs to do so and be accorded full access to information;
- (m) obtain external professional advice and to invite outsiders with relevant experience to attend its meetings if necessary; and
- (n) consider other issues as defined by the Board including regular review of the capacity of the internal audit function.

6.5.2 Recommendation

The Board shall establish an internal audit function which reports directly to the Audit Committee.

Guideline

The Board shall establish an internal audit function, whether internally based or externally sourced and identify a head of internal audit who reports directly to the Audit Committee. The head of internal audit shall have relevant accounting or auditing qualifications and be responsible for providing assurance to the Board that internal controls are operating effectively. Internal auditors shall carry out their functions in accordance with the International Standards in Auditing (ISA), any standards promulgated by the Institute of Internal Auditors (IIA) and the Code of Ethics and Conduct.

Audit Committee and Internal Audit Functions

The audit committee shall determine the responsibilities of the internal audit function and in particular—

- (a) review of the adequacy, scope, functions and resources of the internal audit function, and ensure that it has the necessary authority to carry out its work;
- (b) review the internal audit program and results of the internal audit process and where necessary ensure that appropriate action is taken on the recommendations of the internal audit function;
- (c) review any appraisal or assessment of the performance of members of the internal audit function;
- (d) approve any appointment or termination of senior staff members of the internal audit function;
- (e) ensure that the internal audit function is independent of the activities of the company and is performed with impartiality, proficiency and due professional care;
- (f) determine the effectiveness of the internal audit function; and
- (g) be informed of resignations of internal audit staff and provide the resigning staff members an opportunity to submit reasons for resigning.

Participation in the Meetings of Audit Committee

- (a) The chairperson of the Board, Chief Executive Officer and the finance director may attend meetings of the audit committee upon invitation by the audit committee.
- (b) At least once a year, the Committee shall meet with the external auditors without members of Management being present.
- (c) The Audit Committee should meet regularly, with adequate notice of the issues to be discussed and should record its conclusions.
- (d) The Board should disclose, in an informative way, details of the activities of Audit Committee, the number of Audit Committee meetings held in a year and details of attendance of each Audit Committee member at such meetings.

CHAPTER 7

TRANSPARENCY AND DISCLOSURE

7.0 Overview

Transparency and disclosure are crucial for the market-based monitoring of companies and are central to a shareholder's ability to exercise his or her ownership rights. Disclosure is a

powerful tool for influencing companies and protecting investors. It can help to attract capital and maintain confidence in the markets. Weak disclosure can contribute to the practice of unethical behaviour, weakening of market integrity and loss of investor confidence. Insufficient or unclear information may hamper ability of markets to function, increase cost of capital and result in poor resource allocation.

Disclosure also allows stakeholders to understand a company's activities, policies and performance with regard to environmental and ethical standards, as well as its relationship with the communities where the company operates. Transparency and disclosure allows companies to differentiate themselves from firms which do not practice good governance.

7.1 Timely and balanced disclosure

Principle

The Board shall promote timely and balanced disclosure of all material information concerning the company.

7.1.1 Recommendation

The Board shall ensure the company has appropriate corporate disclosure policies and procedures.

Guideline

The company shall have internal corporate disclosure policies and procedures, which are practical and include feedback from stakeholders. These policies and procedures shall ensure compliance with the disclosure requirements set out in the listing requirements. In formulating these policies and procedures, the Board shall be guided by best practices.

Some key areas requiring disclosure and the recommended disclosure practices are as follows —

(a) Audit Committee

The Board shall disclose in its annual report whether it has an Audit Committee, the members, their qualifications, independence and the mandate of such committee.

(b) Board Charter

The Board shall disclose the company's Board Charter on its website.

(c) Board Evaluation

The Board shall disclose whether evaluation of the Board, the chairperson, the Chief Executive Officer and company secretary has been undertaken in the annual report and financial statements of the company.

(d) Board structure

The Board shall disclose in its annual report whether independent and other non-executive directors constitute at least two thirds of the Board and if it satisfies the representation of the minority shareholders.

(e) Code of Ethics and Conduct

The Board shall disclose the company's Code of Ethics and Conduct on its website.

(f) Company vision, mission, values and strategic objectives

The Board shall ensure that the annual report includes a statement on the company's vision, mission values and strategic objectives and how these influence Board and management's behaviour towards maximization of shareholder value.

(g) Compliance with Laws, Regulations and Standards

The Board shall disclose—

- (i) that a legal and compliance audit was carried out as required;
- (ii) the level of compliance with laws, regulations and standards; and
- (iii) any material departures from required compliance, the causes of non-compliance and the measures to address the non-compliance.

(h) Details about Board members

Current names of Board members shall be disclosed. Additional information to be disclosed includes—

- (i) qualifications of directors;
- (ii) other board memberships;
- (iii) the selection process;
- (iv) whether directors are regarded as independent and if so, the criteria used to support their independence; and
- (v) any other material information.

(i) Ethical leadership and corporate citizenship

The Board shall disclose the company's policy on corporate social responsibility and investment. It shall also disclose the company's policy on conflict of interest.

(j) Environmental Social and Governance policies

The Board shall ensure that the company discloses its environmental, social and governance policies and implementation thereof in its annual report and website.

(k) Financial reporting

The Board should disclose the management discussion and analysis. This is a narrative which sets out—

- (a) management's assessment of the factors that affected the Company's financial condition and results of operation over the period covered by the financial statements; and
- (b) known trends that are reasonably likely to have a material effect on the Company's financial condition and results of operations in the future.

The Board shall disclose whether it has complied with the International Financial Reporting Standards (IFRS) in preparing their financial statements. Any deviation from these financial standards should be disclosed.

(l) Governance audit

The Board shall disclose that a Governance audit was carried out.

(m) Governance structures

The Board shall include in its annual report the governance structure including the composition and size of the Board, the committees of the Board, management and their mandate.

(n) Information technology and corporate reporting

The Board shall disclose the company's policy on information technology.

(o) Insider dealings

While recognizing that insider dealings are illegal, the Board must confirm that there were no known insider dealings.

(p) Key company's risks and sustainability

The Board shall disclose the company's risk management policy.

(q) Key stakeholder groups

The Board shall disclose the key shareholders and the extent of their shareholding. In this regard, the following information should be disclosed—

- (i) the top ten direct shareholders;
- (ii) a complete list of shareholders to the Registrar of Companies on an annual basis;
- (iii) in the case of a subsidiary, the name of the parent company and parent company of the group;
- (iv) as per IFRS requirements, consolidation and a discussion of the basis for consolidation that would include mention of relevant subsidiaries; and
- (v) the key stakeholders who may have an influence on the company's performance and sustainability.

(r) Policy on corporate governance

The Board shall include in its annual report a statement on compliance with corporate governance principles. The statement shall indicate aspects of this Code which have not been applied, the reasons thereof, indicative timelines and proposed strategies towards application.

(s) Procurement

The Board shall disclose the company's policy on procurement.

(t) Related party transactions

The Board shall disclose all related party transactions.

(u) Remuneration structure

The Board shall, annually, disclose in its annual report, its policies for remuneration including incentives for the Board and senior management particularly the following—

- (a)* quantum and component of remuneration for directors including non-executive directors on a consolidated basis in the following categories—
 - (i) executive directors' fees;
 - (ii) executive directors' emoluments;
 - (iii) non-executive directors' fees; and

(iv) non-executive directors' emoluments.

(v) share options and other forms of executive compensation that have to be made or have been made during the course of the financial year; and

(vi) aggregate directors' loans.

(v) Resignation of Board members

The Board shall disclose resignation of a serving Board member in—

(a) two newspapers with national reach immediately it happens;

(b) the company's website immediately it happens; and

(c) the annual report at the end of the financial year.

In addition, Capital Markets Authority shall be notified immediately the resignation takes place and such notification shall include detailed circumstances necessitating the resignation.

(w) Whistle-blowing policy

The Board shall disclose the company's Whistle Blowing Policy on its annual report and website.

8.0 The Guidelines on Corporate Governance Practices by Public Listed Companies in Kenya, 2002, are revoked.*

Dated the 15th December, 2015

JAMES NDEGWA,

Chairman,

Capital Markets Authority.

PAUL MUTHAURA,

Ag. Chief Executive,

Capital Markets Authority.

MR/8827378

*G.N. 3362/2002.